IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 641 (M/S) of 2006

(Under Article 226/227 of the Constitution of India)

District Haridwar

Ishwar Dayal S/o late Sri Chatarsen, Owner of the Baroda Wali Dharmshala,

Vishnu Ghat, Haridwar, Tehsil & District Hardwar …Petitioner

Versus

1- Haridwar Development authority, Haridwar,

2. Additional District Judge/II F.T.C. Haridwar.

3- Civil Judge (J. D.), Haridwar. …respondents

Counsel for the petitioner Sri. Dharmendra Barthwal, advocate

Standing Counsel for the respondents

Hon'ble Rajesh Tandon, J.

Dated 15.6.2006

Heard Sri Alok Senior Advocate assisted by Sri Dharmendra Barthwal, Advocate for the petitioner and S.Dhulia, Senior Advocate, for the respondent no.1, Standing Counsel for the respondents no. 2 & 3.

By the present writ petition petitioner has prayed for a writ of certiorari, quashing the orders dated 20.11.2004, and 24.2.2006 passed by the Courts below, as well as for a writ of Mandamus commanding the respondent No.1 not to interfere in the improvement and alteration work carries out by the petitioner in the inner side of the Baroda Wali Dharmashala Vishnu Ghat, Haridwar.

Briefly stated according to the case of the petitioner he is sole owner of the House NO. 59/36 situated Mohalla Ram Ghat in Tehsil and District Haridwar and the property is mainly used for the stay of pilgrims visiting for the city of Haridwar. Since the building was about 100 years of old, therefore, the petitioner informed the respondent No.1 on 13.8.2003 with regard to maintenance, improvement and replacement of the roof. According to the petitioner the inner alteration and repairing work is exempted from the operation of the Act, under section 52 (a) of the U.P. Urban Building Development Act, 1973.

According to the petitioner he started the improvement, and vide notice dated 2.9.2004 the development authority has informed the petitioner that he is not permitted to do any work without previous sanction of the map by the development authority, otherwise it will amount to unauthorized construction and proceedings under section 27/28 of the U.Pl. Urban Planing development Act 1973 will be initiated. The petitioner has replied the aforesaid notice by making representation stating therein that he did not require previous sanction as no outer work is being done by him.

According to the petitioner, apprehending the punitive action by the development authority, the petitioner has filed the original Suit No. 310/2004 in the Court of Civil Judge (Junior Division) praying for the relief of mandatory injunction and restraining the Haridwar Development Authority form interfering in the repair and internal improvement and alteration work of the petitioner. Along-with the suit, the petitioner has also filed the application under Order 39 Rule 1 & 2

read with Section 151 of Civil Procedure Code. The Civil Judge (Junior Division), has rejected the application. The petitioner has filed the appeal, the same was also dismissed.

During the course of hearing both the parties have submitted that let the suit be decided within a period of 4 months. During this period the counsel for the respondent no. 1 has submitted that the Development Authority not take any steps to demolish the constructions.

In view of the above, the Civil Judge (J.D.) is directed to dispose of the suit within a period of four months from the date of certified copy of the order.

Subject to the above, the writ petition is disposed of. No order as to costs.

Dated 15.6.2006

(Rajesh Tandon, J.)